

SUPPORTING STATEMENT
FOR THE PAPERWORK REDUCTION ACT INFORMATION COLLECTION
SUBMISSION FOR REGULATION D RULE 506(e) FELONS AND OTHER
BAD ACTORS DISCLOSURE STATEMENT

A. JUSTIFICATION

1. Circumstances Making the Collection of Information Necessary

Pursuant to Section 926 of the Dodd-Frank Wall Street Reform and Consumer Protection Act, the Commission adopted amendments to disqualify felons and other bad actors from relying on the exemption from registration in Rule 506 of Regulation D, a frequently-used exemption from the registration requirements for securities offerings. An offering is disqualified from Rule 506 if the issuer or another covered person, such as a director, executive officer or other control person of the issuer or a financial intermediary, is subject to certain sanctions (such as a criminal conviction or court or regulatory order) that were imposed after September 23, 2013.

The “collection of information” within the meaning of the Paperwork Reduction Act of 1995 (“PRA”) relates to the third-party disclosure statement required in Rule 506(e) which is not filed with the Commission. The “Regulation D Rule 506(e) Felons and Other Bad Actors Disclosure Statement” requirement mandates that issuers in a Rule 506 offering deliver a written statement describing pre-existing triggering events (events that occurred prior to September 23, 2013) to purchasers a reasonable time prior to sale. The mandatory disclosure statement does not involve submission of a form to the Commission, and is not required to be presented in any particular format, although it must be in writing.

As a result of the disclosure requirement, investors are able to ascertain whether the issuer or its covered persons have a “bad actor” history that predates the disqualification provisions in Rule 506. This is important because only those “felons and other “bad actors” that have disqualifying events after September 23, 2013 are disqualified from reliance on Rule 506. Since disqualifying events that occurred before September 23, 2013 do not result in disqualification, investors rely on the Rule 506(e) disclosure statement to determine whether the issuer has a bad actor history. The bad actor disclosure statement, which is delivered a reasonable time prior to sale, also serves to provide important information to investors considering whether to purchase from an issuer with a bad actor history.

2. Purpose and Use of the Information Collection

The disclosure statement is required of matters that would have triggered disqualification under Rule 506(d), except that they occurred before September 23, 2013. Issuers are required to deliver to purchasers a written statement describing those pre-existing triggering events a reasonable time before the purchase. This disclosure should put investors on notice of bad actor involvement in Rule 506 offerings that they are evaluating as potential investments.

3. Consideration Given to Information Technology

The collection of information required will not be provided to the Commission, either electronically or otherwise.

4. Duplication of Information

We are not aware of any rules that conflict with or substantially duplicate the rules.

5. Reducing the Burden on Small Entities

The disclosure requirement set forth in Rule 506(e) will apply to all issuers, including small entities. The requirement does not vary depending on the size of the issuer. We believe that many of the issuers in these Rule 506 private offerings are small entities, but we currently do not collect information on total assets of companies and net assets of funds to determine if they are small entities.

6. Consequences of Not Conducting Collection

The purpose of the disclosure requirement is to alert potential investors about the “bad actor” history of issuers conducting securities offerings as well as certain covered persons. The rule amendments without the disclosure requirement would weaken the investor protection benefits intended by Section 926 of the Dodd-Frank Act by enabling issuers and other covered persons with a “bad actor” history to avoid disclosing that history to potential investors.

7. Special Circumstances

Not applicable.

8. Consultations with Persons Outside the Agency

The Commission solicited comment on Regulation D Rule 506(e) Felons and other Bad Actors Disclosure Statement. No comments were received on this submission during the 60-day comment period prior to OMB’s review of this extension.

9. Payment or Gift to Respondents

Not applicable.

10. Confidentiality

Not applicable.

11. Sensitive Questions

No information of a sensitive nature, including social security numbers, will be required under this collection of information. The information collection does not collect personally identifiable information (PII). The agency has determined that a system of records notice (SORN) and privacy impact assessment (PIA) are not required in connection with the collection of information.

12. Estimate of Respondent Reporting Burden

We estimate that approximately 19,908 issuers will conduct a one-hour factual inquiry to determine whether the issuer and its covered persons have had pre-existing triggering events. In addition, we estimate that approximately 220 issuers with disqualifying events will spend ten hours to prepare a disclosure statement describing the matters that would have triggered disqualification under 506(d)(1) of Regulation D, except that these events occurred before the effective date of the bad actor rule amendments, (before September 23, 2013). We derived our burden hour estimates by estimating the average number of hours it would take an issuer to compile the necessary information and data, prepare and review disclosure, file documents and retain records. In connection with rule amendments to the form, we occasionally receive PRA estimates from public commenters about incremental burdens that are used in our burden estimates. We believe that the actual burdens will likely vary among individual issuers based on the nature of their operations. An estimated 2,200 burden hours are attributed to the 220 Rule 506 issuers with disqualifying events in addition to the 19,908 burden hours associated with the one-hour of factual inquiry. The total annual burden hours for all affected Rule 506 issuers to comply with our collection of information is estimated to be approximately 22,108 hours of company personnel time. For administrative convenience, the presentation of the totals related to the paperwork burden hours have been rounded to the nearest whole number and the cost totals have been rounded to the nearest dollar. The estimated burden hours are made solely for the purpose of the Paperwork Reduction Act.

13. Estimate of Total Annualized Cost Burden

We estimate that 220 Rule 506 issuers will retain outside professional firms to assist with preparing the Rule 506(e) disclosure statement, and that each firm will spend three hours on disclosure preparation at an average cost of \$400 per hour. The dollar cost burden for preparing the disclosure statement is \$264,000 (220 Rule 506 issuers x 3 hours (\$400 per hour)). We estimate an hourly cost of \$400 for outside legal and accounting services used in connection with public company reporting. This estimate is based on our consultations with registrants and professional firms who regularly assist registrants in preparing and filing disclosure documents with the Commission. Our estimates reflect average burdens, and therefore, some companies may experience costs in excess of our estimates and some companies may experience costs that are lower than our estimates. For administrative convenience, the presentation of the totals related to the paperwork burden hours have been rounded to the nearest whole number and the cost totals have been rounded to the nearest dollar. The cost estimate is made solely for the purpose of the Paperwork Reduction Act.

14. Costs to Federal Government

There is no cost to the government because the Regulation D Rule 506(e) Felons and Other Bad Actors Disclosure Statement is not filed with the Commission.

15. Reason for Change in Burden

Not applicable.

16. Information Collection Planned for Statistical Purposes

Not applicable.

17. Approval to Omit OMB Expiration Date

The Commission is not seeking approval to omit the expiration date.

18. Exceptions to Certification for Paperwork Reduction Act Submissions

Not applicable.

B. STATISTICAL METHODS

Not applicable.